

HORN SILVER MINES CO., INC.

IBLA 81-388

Decided November 20, 1981

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting noncompetitive over-the-counter oil and gas lease offers. U 47041 through U 47050.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: First-Qualified Applicant

Where an offeror fails to submit a list of corporate officers with his noncompetitive over-the-counter lease offer, as required by 43 CFR 3102.2-5(a)(3), the lease offer is properly rejected. However, when the required evidence of corporate qualifications is submitted with the notice of appeal, the offer may be reinstated and allowed to earn priority from the time of submission of the evidence of qualifications.

APPEARANCES: Ellen Maycock, Esq., Salt Lake City, Utah, for the appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Horn Silver Mines Company Inc., has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated February 3, 1981, rejecting its noncompetitive over-the-counter oil and gas lease offers, U 47041 through U 47050, for failure to comply with 43 CFR 3102.2-5(a)(3) and (b) regarding submission of corporate qualifications.

Appellant's oil and gas lease offers were filed with BLM on October 1, 1980, for land situated in Beaver County, Utah. Enclosed with the offers was an "Affidavit," dated October 1, 1980, and signed

by Page P. Blakemore, Executive Vice President, Horn Silver Mines Company Inc., in which he attested to the fact that appellant was incorporated in Utah, "[t]hat all officers and directors are U.S. Citizens," that there were no foreign stockholders, that he was authorized to act on behalf of appellant in such matters, and that appellant was the sole party in interest.

[1] The applicable regulation, 43 CFR 3102.2-5, requires a corporate offeror to "submit with its offer * * * a statement showing: * * * (3) A complete list of corporate officers, identifying those authorized to act on behalf of the corporation in matters relating to Federal oil and gas leasing * * *." 43 CFR 3102.2-5(a). ^{1/} Also required are the names and addresses of all stockholders holding more than 10 percent of the corporate stock. 43 CFR 3102.2-5(a)(5). In addition, 43 CFR 3102.2-5 requires that, "not later than 15 days after the filing of an offer," a corporate offeror shall file "[a] separate statement from each stockholder owning or controlling more than 10 percent of the stock of the corporation setting forth the stockholder's citizenship, percentage of corporate stock owned or controlled and compliance with the acreage limitations of §§ 3101.1-5 and 3101.2-4 of this title * * *." 43 CFR 3102.2-5(b).

With its notice of appeal filed with BLM, appellant submitted a statement dated February 17, 1981, and signed by Ada Swafford, Corporate Secretary, Horn Silver Mines Company Inc., which stated: "The following are the officers of Horn Silver Mines Co., Inc. Donald F. Sheahan - President[;] Page P. Blakemore, Sr. - Vice President and Treasurer[;] Ada Swafford - Secretary[.] No stockholder owns or controls more than ten percent (10%) of the stock of the corporation."

In its statement of reasons for appeal, appellant contends that it was not required to comply with 43 CFR 3102.2-5(b) because "no stockholder owned or controlled more than 10% of the stock of the corporation" and that its failure to comply with 43 CFR 3102.2-5(a)(3) was "inadvertent." Appellant explains that the regulation "had been effective for only a few months and had been published by [BLM] * * * in a circular entitled 'Simultaneous Oil and Gas Leasing System' (Circular No. 2465)." Appellant's lease offers were regular, rather than simultaneous offers.

Appellant argues that rejection of its lease offers is not reasonably related to the permissible purposes of the regulations and that allowing it to cure the deficiency would not prejudice the rights of any other offeror.

^{1/} 43 CFR 3102.2-5(a)(3) was published in the Federal Register of May 23, 1980, 45 FR 35162, effective June 16, 1980.

[1] A noncompetitive oil and gas lease for Federal lands may be issued only to the first qualified applicant. 30 U.S.C. § 226(c) (1976); McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955); Cotton Petroleum Corp., 38 IBLA 271 (1978). When the subject lease offers were filed, they did not comport with the regulations regarding evidence of corporate qualifications and were, therefore, defective. Trans-Texas Energy, Inc., 57 IBLA 32 (1981). The Department has consistently held that a noncompetitive oil and gas lease offer which is defective earns no priority on the date of its filing, but where the defect is "curable," priority is established as of the date the defect is remedied. Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). In over-the-counter filings, (as distinguished from simultaneous filings under 43 CFR Subpart 3112) where a lease offer is defective for failure to provide proper evidence of corporate qualifications, and such defect is remedied prior to the filing of any junior offer for the subject lands, the lease offer may be considered with priority as of the date the curative information is filed. Century Oil & Gas Corp., 58 IBLA 227 (1981); Bear Creek Corp., 5 IBLA 202 (1972).

Thus, we hold that appellant's lease offers may be considered as augmented by the supplemental evidence of qualifications submitted with its notice of appeal except that priority can only be recognized as of the date the additional evidence was filed, February 23, 1981. 2/ The offers may proceed to adjudication on this basis.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded to BLM for further action consistent herewith.

C. Randall Grant, Jr.
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

2/ Appellant was not required to comply with 43 CFR 3102.2-5(b) because the record indicates that none of its shareholders owned or controlled more than 10 percent of the stock of the corporation.